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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,454	06/30/2003	James Harold Gray	36968/332542	1616
32210	7590	05/02/2008	EXAMINER	
JOHN S. PRATT KILPATRICK STOCKTON LLP 36968 1100 PEACHTREE STREET SUITE 2800 ATLANTA, GA 30309				INGVOLDSTAD, BENNETT
ART UNIT		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/611,454	GRAY ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	BENNETT INGVOLDSTAD	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 25 March 2008.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-21 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/19/07, 3/25/08</u> .                                       | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicants are respectfully reminded of the requirements of 37 CFR 1.121(c)(2) with respect to the proper use of brackets for deleting text from claims. In order to expedite prosecution, the examiner shall presume that the material within the brackets has been deleted or stricken-through.

2. In view of Applicant's amendments, the claim objections are withdrawn.

### ***Response to Arguments***

3. Applicant's arguments filed 17 March 2008 have been fully considered but they are not persuasive.

4. Applicant has amended all claims "to require determination at a data center whether to inform a user of available content, wherein the determination is made independent of any request by the user for the available content, but based at least in part on a search for alternate content having subject matter related to subject matter of the content being viewed by the user when the search is conducted." [para 2].

5. Applicant argues that Omoigui (US 2005/0086688) does not disclose or suggest this functionality. However, in a separate embodiment from the previously cited embodiment, Omoigui discloses that a determination "to inform a user of available content" may be made "independent of any request by the user for the available content" through monitoring of viewing habits without requiring user input [para 0097]. The determination is "based at least in part on a search for alternate content having

subject matter related to subject matter of the content” through monitoring (searching) of alternate content for events of interest to the user, wherein the events of interest are determined to be related to viewed contents by a correlation step [para 0098]. A particular related content may be “content being viewed by the user when the search is conducted” because the related content updating step may be performed in parallel with the viewing habits monitoring step [para 0098], i.e. when a related content is being viewed by the user.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1, 2, 5-9, 12-16, and 19-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Omoigui (US 2005/0086687).

Claim 1: Omoigui discloses a method comprising:

determining at a data center (at encoder/server 14 [Fig 1]) whether to inform a user of an interactive television service of alternate content (informing a user of

events of interest in alternate programs [para 0098]), the user connected with the data center via a network [Fig 1];

responsive to determining to inform the user of the alternate content, generating a hot key signal indicating availability of the alternate content (sending a notification of the alternate content 608 [para 0098]); and

inserting the hot key signal into a content signal transmitted to the user from the head-end and data center via the network (sending the notification from the encoder/server [para 0037]);

wherein the determining is independent of any request by the user for the alternate content [para 0097], but based at least in part on a search for alternate content (monitoring of alternate content 604 [para 0098]) having subject matter that is related to subject matter of content being viewed by the user when the search is conducted (related as determined by correlating step [para 0098], which uses viewing habits data that may be updated in parallel with viewing habits monitoring [para 0098], i.e. when the content is being viewed by the user).

Claim 2: Omoigui further discloses the method of claim 1, wherein determining at the data center whether to inform the user of the interactive television service of alternate content is based on results of a search of programming information (monitoring alternate programs for events of interest [para 00908]).

Claim 5: Omoigui further discloses the method of claim 1, wherein determining at the data center whether to inform the user of the interactive television service of alternate content is based on information received during generation of programming information (event information monitored during generation of a live content database [para 0071]).

Claim 6: Omoigui further discloses the method of claim 1, wherein the hot key signal comprises an Internet Protocol (IP) data packet, the Internet Protocol data packet having a header portion and a body portion, the body portion having a data field indicating a location of the available content (content which includes video and other data i.e. notifications [0029] can be multicast over the Internet [0031] which implies using IP packets, and a location of the alternate content is included so the user can switch to the other presentation [0009]).

Claim 7: Omoigui further discloses the method of claim 6, wherein the Internet Protocol data packet is transmitted from the data center as an Internet Protocol multicast to the user via the network (content is multicast over the Internet [0031]).

Claim 8: Omoigui discloses a data center comprising:  
a hot key generation portion to determine whether to inform a user of an interactive television service of alternate content (an encoder/server determines

where to send alternate content notifications [0036]), the user connected with the data center via a network [Fig 1] and responsive to determining to inform the user of the alternate content, generating a hot key signal indicating availability of the alternate content (a notification is sent after the determination [0037]);

a multiplexor system to insert the hot key signal into a content signal (the video and other data are transmitted together [0029]); and

a transport system to transmit the content signal and the hot key signal to the user from the data center via the network [Fig 1];

wherein the hot key generation portion determines whether to inform the user of alternate content independent of any request by the user for the alternate content [para 0097], but based at least in part on a search for alternate content (monitoring of alternate content 604 [para 0098]) having subject matter that is related to subject matter of content being viewed by the user when the search is conducted (related as determined by correlating step [para 0098], which uses viewing habits data that may be updated in parallel with viewing habits monitoring [para 0098], i.e. when the content is being viewed by the user).

Claims 9 and 12-14 are rejected under the same grounds as claims 2 and 5-7, respectively.

Claim 15: Omoigui discloses a machine-readable medium having stored thereon a series of instructions (a dedicated media server or a general purpose computer

[0054] imply processors with machine-readable media having stored instructions), the instructions, when executed by a processor, cause the processor to:

determine at a data center whether to inform a user of an interactive television service of alternate content (an encoder/server determines where to send alternate content notifications [0036]), the user connected with the data center via a network [Fig 1];

responsive to determining to inform the user of the alternate content, generate a hot key signal indicating availability of the alternate content (a notification is sent after the determination [0037]); and

insert the hot key signal into a content signal transmitted to the user from the data center via the network (encoder/server sends notifications to client devices [0037]),

wherein the instructions cause the processor to determine whether to inform the user of alternate content independent of any request by the user for the alternate content [para 0097], but based at least in part on a search for alternate content (monitoring of alternate content 604 [para 0098]) having subject matter related to subject matter of content being viewed by the user when the search is conducted (related as determined by correlating step [para 0098], which uses viewing habits data that may be updated in parallel with viewing habits monitoring [para 0098], i.e. when the content is being viewed by the user).

Claims 16 and 19-21 are rejected under the same grounds as claims 2 and 5-7, respectively.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 3, 4, 10, 11, 17, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Omoigui (US 2005/0086687) in view of Agnihotri (US 2003/0163828).

Claim 3: Omoigui does not further disclose the method of claim 2, wherein determining at the data center whether to inform the user of the interactive television service of alternate content further comprises performing a search of one or more Internet web sites (whether the monitored program information [para 0098] i.e. event data is on a website or not is not specified).

Agnihotri discloses event data for a broadcast program that is available on a website [para 0032] found via a search [para 0023].

It would have been obvious to have modified the event data source in the method of Omoigui to have been a website as disclosed by Agnihotri for the purpose of providing event metadata through the world wide web.

Claim 4: Omoigui in view of Agnihotri further discloses the method of claim 3, wherein performing the search of one or more web sites comprises using the results of the search of programming information (using event data to determine events of interest [Omoigui para 0096]).

Claims 10 and 11 are rejected under the same grounds as claims 3 and 4 respectively.

Claims 17 and 18 are rejected under the same grounds as claims 3 and 4 respectively.

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BENNETT INGVOLDSTAD whose telephone number is (571)270-3431. The examiner can normally be reached on M-Th 8-6:30 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Beliveau can be reached on (571) 272-7343. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BI

/Scott Beliveau/  
Supervisory Patent Examiner, Art Unit 2623